



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket 80-286; FCC 17-55]

Jurisdictional Separations and Referral to the Federal-State Joint Board

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission extends the existing freeze of jurisdictional separations rules. The current extension allows the Commission, in cooperation with the Federal-State Joint Board, to consider further changes to the separations process in light of changes taking place in the telecommunications market place. The freeze also serves to ease the burdens of regulatory compliance and uncertainty for Local Exchange Carriers.

DATES: Effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rhonda Lien, Pricing Policy Division, Wireline Competition Bureau, at (202) 418-1540 or at Rhonda.Lien@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 17-55 released May 15, 2017. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. The full-text copy of this document can also be found at the following internet address:

https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-55A1.docx.

Synopsis

I. BACKGROUND

1. Historically, incumbent LECs (ILECs) were subject to rate-of-return rate regulation at both the federal and state levels. After the adoption of the 1996 Telecommunications Act (1996 Act), the Commission initiated a proceeding to comprehensively reform the part 36 separations procedures to ensure compliance with the objectives of the 1996 Act, and to address statutory, technological, and market changes in the telecommunications industry.

2. Jurisdictional separations is the third step in a four-step regulatory process that begins with a carrier's accounting system and ends with the establishment of tariffed rates for the ILEC's interstate and intrastate regulated services. First, carriers record their costs into various accounts in accordance with the Uniform System of Accounts for Telecommunications Companies (USOA) prescribed by part 32 of our rules. Second, carriers divide the costs in these accounts between regulated and nonregulated activities in accordance with part 64 of our rules. This division ensures that the costs of nonregulated activities will not be recovered in regulated interstate service rates. Third, carriers separate the regulated costs between the intrastate and interstate jurisdictions in accordance with our part 36 separations rules. In certain instances, costs are further disaggregated among service categories. Finally, carriers apportion the interstate regulated costs among the interexchange services and rate elements that form the cost basis for their exchange access tariffs. For carriers subject to rate-of-return regulation, this apportionment is performed in accordance with part 69 of our rules.

3. In 1997, the Commission initiated a proceeding seeking comment on the extent to which legislative, technological, and market changes warranted comprehensive reform of the separations process. In the 2001 Separations Freeze Order, the Commission froze, on an interim

basis, the part 36 jurisdictional separation rules for a five-year period beginning July 1, 2001, or until the Commission completed comprehensive separations reform, whichever came first.

Specifically, the Commission adopted a freeze of all part 36 category relationships and allocation factors for price cap carriers, and a freeze of all allocation factors for rate-of-return carriers. The Commission concluded that several issues, including the separations treatment of Internet traffic, should be addressed in the context of comprehensive separations reform. The Commission further concluded that the freeze would provide stability and regulatory certainty for ILECs by minimizing any impacts on separations results that might occur due to circumstances not contemplated by the Commission's part 36 rules, such as growth in local competition and new technologies. The Commission also found that a freeze of the separations process would reduce regulatory burdens on ILECs during the transition from a regulated monopoly to a deregulated, competitive environment in the local telecommunications marketplace.

4. Price cap carriers have since received conditional forbearance from the part 36 jurisdictional separations rules. As a result, the freeze primarily impacts rate-of-return carriers who were only required to freeze their allocation factors, but were given the option of also freezing their category relationships at the outset of the freeze. Those that have chosen to freeze relationships calculate: (1) the relationships between categories of investment and expenses within part 32 accounts; and (2) the jurisdictional allocation factors, as of a specific point in time, and then lock or "freeze" those category relationships and allocation factors in place for a set period of time. The carriers use the "frozen" category relationships and allocation factors for their calculations of separations results and therefore are not required to conduct separations studies for the duration of the freeze.

5. Over time, the Commission has repeatedly extended the freeze, which is currently set to expire on June 30, 2017. The Commission has consistently consulted with the Joint Board

about separations reform, pursuant to the Act's requirement that the Commission refer to the Joint Board proceedings regarding "the jurisdictional separations of common carrier property and expenses between interstate and intrastate operations." The Joint Board recommended the initial freeze and has made a number of recommendations to the Commission about how best to proceed with reform of the separations rules. The state members of the Joint Board made their most recent recommendations in 2011.

6. Since the Joint Board's recommendations, the Commission comprehensively reformed its universal service and intercarrier compensation systems and proposed additional reforms. On March 30, 2016, the Commission adopted the Rate-of-Return Reform Order, which instituted significant reforms to the rules governing the provision of universal service support to rate-of-return LECs. On February 23, 2017, we completed our review of the part 32 Uniform System of Accounts (USOA) rules and streamlined various accounting requirements for all carriers and eliminated certain accounting requirements for large carriers.

7. On March 20, 2017, in a Further Notice of Proposed Rulemaking (2017 FNPRM), 82 FR 16152-01, April 3, 2017, we proposed and sought comment on a further eighteen month extension of the separations freeze while we continue to work with the Joint Board. Comments were received from eight parties. On April 24, 2017, the Joint Board signaled its intent to move forward by releasing two public notices seeking comment on issues related to comprehensive permanent separations reform, and separations reform in light of recent reforms to part 32 rules. As we explained in the 2017 FNPRM, we anticipate that the Joint Board will meet in July 2017 to consider reform of the separations process and we expect to receive the Joint Board's recommendations for comprehensive separations reform within nine months thereafter.

II. DISCUSSION

8. To allow us to move forward with orderly reform of the separations rules, based on the record before us, we extend through December 31, 2018, the freeze on part 36 category relationships and jurisdictional cost allocation factors that the Commission adopted in the 2001 Separations Freeze Order. As a result of the extension, price cap carriers that have not availed themselves of conditional forbearance from the part 36 rules will use the same relationships between categories of investment and expenses within part 32 accounts and the same jurisdictional allocation factors that have been in place since the inception of the current freeze on July 1, 2001. Rate-of-return carriers will use the same frozen jurisdictional allocation factors, and will, absent a waiver, use the same frozen category relationships if they had opted in 2001 to freeze those.

9. The issues involved with modernizing separations are broad and complex. As commenters point out, the policy changes the Commission has adopted in recent years, particularly those arising from the Commission's fundamental reform of the high cost universal service support program, the intercarrier compensation systems, and the part 32 accounting rules, will significantly affect our analysis of interim and comprehensive separations reform, as well as that of the Joint Board. Extending the freeze provides time for the Joint Board to consider the impact of our recent reforms on the separations rules and gives us the time necessary to tackle rule changes informed by the Joint Board's recommendations. We strongly urge interested parties to provide detailed and constructive feedback about how best to revise or eliminate the separations process as we work towards separations reform with the Joint Board.

10. We agree with those commenters that argue that allowing the existing freeze to lapse and frozen separations rules to be reinstated during the pendency of our work with the Joint Board would create undue instability and administrative burdens on affected carriers. As WTA

has explained, reinstating these long-unused separations rules, many of which are now outmoded, would not only require substantial training and investment by rural LECs, but also could cause significant disruptions in their regulated rates, cost recovery and other operating conditions. If we were to allow the freeze to expire, carriers would have to reinstitute their former separations processes, even those that no longer have the necessary employees and systems in place to comply with the separations rules. Many carriers likely would have to hire or reassign and train employees and redevelop systems for collecting and analyzing the data necessary to perform separations in the prior manner. Requiring carriers to reinstate their separations systems “would be unduly burdensome when there is a significant likelihood that there would be no lasting benefit to doing so.”

11. Two commenters, a group of concerned individuals called the Irregulars and Terral Telephone Company, Inc. (Terral), oppose the extension of the freeze. According to the Irregulars, the freeze is being used to deliberately hide “massive financial cross subsidies and data manipulation.” However, the evidence offered does not support this claim. We thus find the harm alleged by the Irregulars to be speculative and insufficient to outweigh the clear benefits that will result from granting a further extension. Terral opposes the extension as it applies to Terral and then uses its comments to ask the Commission to grant its pending petition for waiver of the categories of frozen separations. We decline, however, to substantively address individual requests for relief or a waiver of the separations rules in this Order as those requests are beyond the scope of this proceeding. We do welcome the input of these commenters as we move toward full consideration of how best to reform the separations rules and note that the decision to extend the freeze does not affect the Commission’s ability to address pending or future waiver petitions.

12. Separately, we deny the request of USTelecom to modify frozen category relationships for carriers electing the Alternative Connect America Cost Model and to make other changes to the separations process. These issues fall within the pending referral to the Joint Board and may be addressed in the Joint Board’s recommended decision. We will therefore not grant USTelecom’s request here.

13. With regard to the length of the extension, the majority of commenters support extending the freeze for at least eighteen months. Some argue that the freeze should be longer, and should be tied to the completion of a comprehensive rulemaking. Some stakeholders have expressed concern about the amount of time needed to operationalize any changes we ultimately make to the separations rules. While those concerns are legitimate, they are premature at this point in the process, and would be more appropriately raised and addressed when considering the implementation of any reform measures as part of the on-going, comprehensive rulemaking proceeding.

14. We find that extending the freeze by eighteen months, the length of time proposed in the 2017 FNPRM, is appropriate. We fully agree with NASUCA that the freeze should not continue indefinitely. While we recognize that an eighteen-month freeze extension is shorter than those the Commission previously adopted, as we explained in the 2017 FNPRM, “now is the time to address the separations rules.” We are committed to moving this process forward and believe that eighteen months is a sufficient amount of time to carefully consider the issues in the record and work with the Joint Board toward meaningful separations reform. We intend to work diligently with the Joint Board toward that goal.

III. PROCEDURAL MATTERS

15. Final Regulatory Flexibility Certification. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-

and-comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

16. As discussed above, in 2001 the Commission adopted a Joint Board recommendation to impose an interim freeze of the part 36 category relationships and jurisdictional cost allocation factors, pending comprehensive reform of the part 36 separations rules. The Commission ordered that the freeze would be in effect for a five-year period beginning July 1, 2001, or until the Commission completed comprehensive separations reform, whichever came first. On May 16, 2006, concluding that more time was needed to implement comprehensive separations reform, the Commission extended the freeze for three years or until such comprehensive reform could be completed, whichever came first. On May 15, 2009, the Commission extended the freeze through June 30, 2010; on May 24, 2010, extended the freeze through June 30, 2011; on May 3, 2011, extended the freeze through June 30, 2012; on May 8, 2012, extended the freeze through June 30, 2104; and on June 12, 2014, extending the freeze through June 30, 2017.

17. The purpose of the current extension of the freeze is to allow the Commission and the Joint Board additional time to consider changes that may need to be made to the separations process in light of changes in the law, technology, and market structure of the

telecommunications industry without creating the undue instability and administrative burdens that would occur were the Commission to eliminate the freeze.

18. Implementation of the freeze extension will ease the administrative burden of regulatory compliance for LECs, including small incumbent LECs. The freeze has eliminated the need for all incumbent LECs, including incumbent LECs with 1500 employees or fewer, to complete certain annual studies formerly required by the Commission's rules. The effect of the freeze extension is to reduce a regulatory compliance burden for small incumbent LECs, by abating the aforementioned separations studies and providing these carriers with greater regulatory certainty. Therefore, we certify that the requirement of the report and order will not have a significant economic impact on a substantial number of small entities.

19. The Commission will send a copy of the report and order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the report and order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.

20. Paperwork Reduction Act Analysis. This Report and Order does not contain new, modified, or proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new, modified, or proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

21. Congressional Review Act. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

22. Effective Date. We find good cause to make these rule changes effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. As explained above, the current freeze is scheduled to expire on June 30, 2017. To avoid unnecessary disruption to carriers subject to these rules, we preserve the status quo by making the extension of the freeze effective before the scheduled expiration date.

IV. ORDERING CLAUSES

23. Accordingly, IT IS ORDERED, pursuant to sections 1, 2, 4(i), 201-05, 215, 218, 220, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201-205, 215, 218, 220, and 410, that this Report and Order is ADOPTED.

24. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

25. IT IS FURTHER ORDERED, pursuant to section 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. 553(d)(3), and sections 1.4(b)(1) and 1.427(b) of the Commission's rules, 47 CFR 1.4(b)(1), 1.427(b), that this Report and Order SHALL BE EFFECTIVE **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

List of Subjects in 47 CFR Part 36

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

FEDERAL COMMUNICATIONS COMMISSION.

Katura Jackson,
Federal Register Liaison Officer,
Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 36 as follows:

PART 36 - JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 36 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i) and (j), 205, 221(c), 254, 303(r), 403, 410 and 1302

unless otherwise noted.

**§§ 36.3, 36.123, 36.124, 36.125, 36.126, 36.141, 36.142, 36.152, 36.154, 36.155, 36.157, 36.191,
36.212, 36.214, 36.372, 36.374, 36.375, 36.377, 36.378, 36.379, 36.380, 36.381, and 36.382**

[Amended]

2. In 47 CFR part 36, remove the date “June 30, 2017” and add, in its place, the date “December 30, 2018” in the following places:

- a. Section 36.3(a) through (c), (d) introductory text, and (e);
- b. Section 36.123(a)(5) and (6);
- c. Section 36.124(c) and (d);
- d. Section 36.125(h) and (i);
- e. Section 36.126(b)(6), (c)(4), (e)(4), and (f)(2);
- f. Section 36.141(c);
- g. Section 36.142(c);
- h. Section 36.152(d);
- i. Section 36.154(g);

- j. Section 36.155(b);
- k. Section 36.156(c);
- l. Section 36.157(b);
- m. Section 36.191(d);
- n. Section 36.212(c);
- o. Section 36.214(a);
- p. Section 36.372;
- q. Section 36.374(b) and (d);
- r. Section 36.375(b)(4) and (5);
- s. Section 36.377(a) introductory text, (a)(1)(ix), (a)(2)(vii), (a)(3)(vii), (a)(4)(vii), (a)(5)(vii), and (a)(6)(vii);
- t. Section 36.378(b)(1);
- u. Section 36.379(b)(1) and (2);
- v. Section 36.380(d) and (e);
- w. Section 36.381(c) and (d); and
- x. Section 36.382(a).

[FR Doc. 2017-11418 Filed: 6/1/2017 8:45 am; Publication Date: 6/2/2017]